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1886
1888
1906
1923
1952
1967

RECEIVED
SEP 16 1992
WATER RIGHTS
SALT LAKE

September 15, 1992

JOHN H. SNOW 1917-1980

OF COUNSEL
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WRITER'S DIRECT NUMBER:

322-9156

Robert L. Morgan, P.E.
Utah State Engineer
1636 West North Temple, #220
Salt Lake City, Utah 84116-3156

Re: Water Distribution Plan for the Utah Lake Drainage
Basin - 4/30/92 Final Draft (the "Distribution Plan")

Dear Mr. Morgan:

Provo River Water Users Association (the "PRWUA") respectfully
submits the following comments relative to the 4/30/92 Final Draft
of the Water Distribution Plan for the Utah Lake Drainage Basin.

GENERAL COMMENTS

PRWUA respectfully suggests that it is premature to
implement the Distribution Plan on November 1, 1992 for an
interim period of one year. PRWUA believes the Distribution
Plan is deficient in many respects and will require major
revisions before being workable. Furthermore, it would seem
ill-advised to implement the Distribution Plan during the
current extreme drought conditions and particularly with Utah
Lake at its lowest level during the last 31 years. Rather,
it would seem more rational to implement the Distribution Plan
during a normal water cycle when normal conditions are
restored.

PRWUA submitted detailed comments under dates of July 1,
1991 to the 5/14/91 Draft, and on January 31, 1992 to the
10/15/91 Revised Draft. Those comments will not be restated
here. However, PRWUA incorporates those comments by reference
as applicable to the April 30, 1992 Final Draft and strongly

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urges the State Engineer to revise the Final Draft accordingly before any implementation thereof.

Rather than restate PRWUA's prior comments, the following comments are respectfully submitted to the 4/3/92 State Engineer's responses to PRWUA's 1/31/92 Comments.

As to 1), on page 1, the recognition that there are areas which require further study and that there may be some issues which have been overlooked, supports the advisability of postponing implementation until those studies can be completed and all issues have been addressed. In sum, PRWUA respectfully suggests that to implement an incomplete plan would give rise to more problems than would be resolved.

As to 2), on page 1, the recognition that the 125,000 acre-feet ("AF") primary pool is without official legal recognition with potential legal problems, is all the more reason for its elimination. The "carry over" concept addressed at the top of page 2 is inconsistent with the underlying premise of the Distribution Plan and is contrary to the actual operation of Utah Lake since its inception as a reservoir. Entitlements from Utah Lake under the Distribution Plan are predicated on annual diversion requirements for primary and secondary storage rights. None of those rights include carry over or holdover storage. If any company does not use all of its annual entitlement during that year, it has no right to carry over the balance for its own use during the following year. Such balance reverts to the common pool and becomes available to supply the collective annual entitlements of all companies during the following year. PRWUA respectfully suggests that Utah Lake always has been so operated.

PRWUA acknowledges that the larger the quantity of water remaining in Utah Lake at the end of irrigation season, the higher will be the probability that the collective annual diversion requirements will be met during the following year. Likewise, the larger remaining quantity, the higher will be the evaporation losses. The Distribution Plan provides for quantities of priority storage water in Utah Lake and system storage water generally greatly in excess of those quantities required to meet the collective annual diversion requirements from Utah Lake. PRWUA is of the view that the Distribution Plan goes too far in an attempt to provide assurances to the

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Utah Lake users that their annual diversion requirements will be met every year.

SPECIFIC COMMENTS

1.0 Introduction.

1) The revisions noted do clarify the imported water issues. However, PRWUA still believes the imported water should be incorporated into the Distribution Plan.

3.1 Background.

2) PRWUA does not dispute that Right Nos. 59-3496 (North Jordan Irrigation Company) and 59-3517 (Kennecott Utah Copper Corporation) are entitled to be augmented from storage in Utah Lake to the extent that accretions to the Jordan River between the Turner Dam and the North Jordan Diversion Dam are insufficient to satisfy those rights. However, PRWUA believes that the Distribution Plan should reflect those conditions and thereby reduce the "priority storage" in Utah Lake before upstream "system storage" can be converted to "priority storage". Likewise, the "priority storage" in Utah Lake should be reduced to reflect the subordination of those portions of Right Nos. 57-5272 and 57-5722 allocated to SLCWCD.

4) PRWUA appreciates the State Engineer's explanation that the 3400 AF under Right Nos. 55-7060 and 55-7061 will be counted as "priority storage" and not "system storage" when stored in Deer Creek Reservoir.

5) PRWUA concurs with the State Engineer's conclusion that the Utah Lake rights cannot be transferred to the Provo River, particularly to storage on the Provo River upstream from Deer Creek Reservoir under the original priorities of the Utah Lake rights. PRWUA is firmly of the view that such transfer, if ever permitted, must be subordinated to the Provo River Project water rights. PRWUA is still of the view that the 25,000 AF of primary storage under Right No. 59-7624 (CUWCD) and 5,073 AF of secondary storage under Right Nos. 59-14, 59-15 and 59-20 (CUWCD) should be deducted from upstream "system storage" unless and until CUWCD requires the use of those waters from Utah Lake.

4.0 Relationship of Storage Rights in Utah Lake . . .

1) PRWUA is still of the view that a distinction must be made between Utah Lake primary storage rights and Utah Lake secondary storage rights throughout the whole Distribution Plan. To say that the system becomes more complex by separating primary and secondary storage is a given, but is no basis for subjecting the upstream storage rights with priorities earlier than the secondary storage rights to the full 616,700 AF of "system storage". To do so is not only contrary to law, but is basically unfair.

6.0 Other Distribution Issues

1) PRWUA respectfully suggests that paragraph 121 of the Provo River Decree speaks for itself and must be followed in the administration of the Distribution Plan.

3, 4) The exchange covering the 2,225 shares of stock of PRWUA referred to in the last paragraph on page 6 of PRWUA's 1/31/92 Comments and at the top of page 5 of the State Engineer's response is covered by the Provo River Project Certificates of Appropriation. Accordingly, PRWUA interprets the comments as excluding the foregoing from the "concurrent exchange" concept, since those exchanges are based on applications to appropriate and not applications for exchange. Thus, the authority for such exchanges are formalized by the applications to appropriate, the proofs of appropriation thereon and the certificates of appropriation issued by the State Engineer. PRWUA concurs that such exchanges should be administered on the basis of concurrent credits in Deer Creek Reservoir but not on concurrent physical exchanges of water. PRWUA understands that a formal record of those uses and credits are maintained by the Provo River Water Commissioner. PRWUA is of the view that the Deer Creek/Strawberry Exchange has been administered in accordance with the combined Provo River Project water rights and Bonneville Unit water rights which require replacement into Utah Lake but not concurrent replacement. PRWUA respectfully takes issue with the notion that there have been abuses of the exchange statute in implementing the Deer Creek/Strawberry Exchange.

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7.0 Adjudication Issues

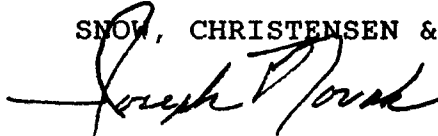
1) The response clarifies the position of the State Engineer regarding relative priorities and PRWUA concurs therewith.

Additional Comments

The apprehension of PRWUA is predicated on the workability of the Distribution Plan. Undoubtedly the process will be more helpful in formulating the proposed determination. However, PRWUA believes that to implement the Distribution Plan on November 1, 1992 with all of the attendant uncertainties would be a mistake. PRWUA respectfully suggests that the Distribution Plan needs a more meaningful reevaluation and more fine tuning before its implementation.

Very truly yours,

SNOW, CHRISTENSEN & MARTINEAU



Joseph Novak, General Counsel
Provo River Water Users Association

JN:dwb

cc: Provo River Water Users Association
United States Bureau of Reclamation
Central Utah Water Conservancy District